ORIGINAL
FILE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Telephone Consumer	)	CC Docket No. 92-90
Protection Act of 1991	)	
	)	

REPLY COMMENTS OF THE AMERITECH OPERATING COMPANIES

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I. INTRODUCTION AND SUMMARY

The Ameritech Operating Companies[1] hereby submit these reply comments in response to the Commission's notice of proposed rulemaking ("NPRM") in the above-captioned docket. The NPRM requested comments on the Commission's proposed rules implementing the Telephone Consumer Protection Act of 1991, 47 U.S.C. Section 227 (the "Act").[2] In their initial Comments, the Ameritech Operating Companies generally endorsed the Commission's proposed rules, but sought clarification of a few issues.[3] The comments received from several other parties also requested clarification of some of the issues raised by the Companies.[4] With clarification of these

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[1] The Ameritech Operating Companies are: Illinois Bell Telephone Company, Indiana Bell Telephone, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc., herein referred to as "the Companies."

[2] The Act was passed December 20, 1991.

[3] In addition to the issues discussed further in these Reply Comments, the Companies, in their initial Comments, sought clarification of the proposed rules with respect to Automated Operator Services and Automatic Meter Reading Service. Although the Companies do not raise those matters specifically in this pleading, our concerns with those issues still exist.

[4] See e.g., Sears Roebuck & Company at 2-3, Student Loan Marketing Association at 10-11, North American Telecommunications Association at 3-5, and Association of National Advertisers at 3.

issues, the Companies can endorse the proposed rules of the Commission in this docket. With respect to the issue of additional regulatory reform to address the problem of unsolicited telephone calls, the Companies support requiring each company that engages in telemarketing to maintain "do not call" lists.

The National Consumers League suggested that the NPRM be withdrawn and that the Commission start anew.[5] Such drastic action is unnecessary, and would further delay implementation of rules to address the concerns raised in this docket. The Commission's proposed rules are basically sound. With the relatively minor changes suggested by the Companies, consumers will have an effective and cost-efficient solution to this problem.

II. THE COMMISSION SHOULD CLARIFY THE TYPE OF EQUIPMENT AFFECTED BY THE ACT, THE PROHIBITIONS APPLICABLE TO TELEPHONE CALLS TO RESIDENCES AND THE STATUS OF VOICE MESSAGE DELIVERY SERVICES.

A. The Definition Of Autodialers

As noted in the comments of numerous parties,[6] there is a substantial difference between an automatic dialer with a recorded message player ("ADRMP") and a predictive dialer. The definition of an "automatic telephone dialing system," as set forth in the Act ("autodialer"), is broad enough to include certain telephones, PBX systems, personal computers with a modem and other communication equipment.[7] "Autodialers," as

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[5] National Consumers League at 6.

[6] See, e.g., D. F. King & Co., Inc. at 1, Audio-Technica at 1, CUNA Mutual Insurance Group at 1, Digital Systems International, Inc. at 5-6.

[7] Once the Commission has clearly defined the autodialing equipment subject to the Act, that definition should be specifically stated in the rules. Currently, the proposed rules do not contain a definition of the equipment subject to the rules.

commonly understood, place calls to randomly selected or sequentially generated telephone numbers and may or may not use a prerecorded or artificial voice message. Predictive dialers are programmed to dial certain numbers and to connect to a live operator once the telephone call is answered. Predictive dialers are efficient, and result in cost savings to both companies and their customers. Most complaints received by the Commission arose from calls placed by ADRMPs. Therefore, the Commission should specifically exclude from the definition of "automatic telephone dialing systems" predictive dialers and autodialers that do not use prerecorded messages or artificial voices.

B. Any Additional Restrictions On Residential Calls Should Be Limited To Calls Placed Using An Autodialed Number And An Artificial Voice Or Prerecorded Message

Section 227(b)(1)(B) of the Act prohibits the "initiation" of a telephone call to a residential line using an artificial voice or prerecorded message without prior consent. It does not mention "automatic telephone dialing systems." Consequently, on its face, the Act does not prohibit telephone calls to a residential line using an autodialer without an artificial or prerecorded voice message. This construction of Section 227(b)(1)(B) accurately reflects congressional intent to eliminate the abuses prevalent with ADRMPs. Nonetheless, the NPRM states that calls to a residential line using an autodialer will be prohibited.[8] Such a result would be unwarranted. Any regulation prohibiting calls to residential telephone lines should be limited to calls placed by ADRMPs.

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[8] NPRM at ¶ 8.

Other sections of the Act and the proposed rules address the concerns that have been levied against ADRMPs. For example, as a result of the Act and the proposed rules, consumers will no longer be troubled by ADRMPs that do not release a telephone line after the consumer has hung up. Further, the statute and proposed rules prohibit the placement of calls to emergency telephone lines, hospital rooms and other similar facilities using ADRMPs. Accordingly, there is no valid consumer interest in restricting autodialed calls without an artificial or prerecorded message to residential telephone lines.

C. Voice Message Delivery Services Meet Significant Consumer Needs and Should Not Be Prohibited

Several commenters noted that the legislative history strongly supports the exemption of voice message delivery services from the prohibitions of the Act.[9] To the extent the Commission's proposed rules fail to do so, a tremendous disservice is done to the thousands of consumers who would, and who do, utilize such services.[10] None of the abuses reported to Congress are caused by voice message delivery services. Public voice message delivery services represent a significant improvement of the public telecommunications network, and their availability should not be restricted or jeopardized without good cause.

Congressman Markey recognized the importance of such services. He stated that:

> ... the bill also allows the Federal Communications Commission to exempt, by rule or order, classes or categories of calls made for

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[9] See, e.g., MessagePhone, Inc. at 5-6, Bell Atlantic at 2, BellSouth at 2-3, Pacific Bell and Nevada Bell at 4-5.

[10] As noted in the initial comments of the Companies, Ameritech may offer such a voice message delivery service and Bell Atlantic currently offers several such services. Bell Atlantic at 2, Fn. 5.

> commercial purposes that do not "adversely affect the privacy rights" that this section of the bill is intended to protect and, that "do not include the transmission of any unsolicited advertisement." ... I fully expect the Commission to grant an exemption, for instance, for voice messaging services that forward calls.... Such a voice messaging service is a benefit to consumers and should not be hindered by this legislation.[11]

The Commission should acknowledge this and similar express statements of intent from Congress, and specifically exempt public voice message delivery services from the Act.

III. THE TECHNICAL REQUIREMENTS IN SECTION 68.318(c)(4) OF THE PROPOSED RULES SHOULD BE CLARIFIED WITH RESPECT TO FACSIMILE BROADCAST SERVICE PROVIDERS.

Ameritech Corporation, under the name Ameritech Faxtra,™ offers a "store and forward" facsimile delivery service. The proposed rules require the "sender" of a facsimile message to provide identification, including the telephone number of the sending machine on each facsimile.[12] Logically, this requirement should be met by the originator of the facsimile as opposed to the "store and forward" company. The recipient of the message is undoubtedly more interested in the identity of the originator of the facsimile message than the forwarding means. Thus, the Commission should clarify Section 68.318(c)(4) by specifically exempting the store and forward company from the obligation to comply with this section of the Act. The Companies endorse Bell Atlantic's proposed modification of Section 68.318(c)(4) which would eliminate any confusion on this issue.[13]

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[11] Cong. Rec. at H11310.

[12] Proposed Rules, Section 68.318(c)(4).

[13] Bell Atlantic at 4.

IV. COMPANY-SPECIFIC "DO NOT CALL" LISTS ARE THE REGULATORY SOLUTION WHICH MEETS THE PRESIDENT'S ECONOMIC PARAMETERS AND PROTECTS THE CONCERNS OF CONSUMERS.

Commenters representing many different perspectives on this issue support company-specific "do not call" lists as a feasible and effective mechanism for minimizing consumer dissatisfaction in this area.[14] There are several significant advantages for such "do not call" lists. First, many Companies already utilize "do not call" lists. Also, the Direct Marketing Association ("DMA") offers its nationwide "Telephone Preference Service" to assist in the communication of a customer's desire not to receive telemarketing calls.[15] The DMA program could be easily expanded to accommodate the goals of the Act.

Second, "do not call" lists are relatively inexpensive to establish and maintain[16] compared with the cost of developing a nationwide database. In the case of "do not call" lists, the cost is clearly borne by the telemarketing industry, and, specifically, the companies that engage in telemarketing. Each company is able to develop a list with the level of sophistication for which it is willing to commit the resources. The Commission should develop minimum standards that all telemarketers would be required to adopt. Beyond that, each company could, to the extent required to maintain the goodwill of its potential customers, develop more sophisticated databases.

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[14] Southwestern Bell Telephone Company at 9-11, Citicorp at 23-28, Olan Mills, Inc. at 7-10 and Sprint Corporation at 9.

[15] See, DMA at 8-9.

[16] As noted by MCI, the costs would be minimal for training at those companies that do not currently maintain "do not call" lists. The list in most cases could probably be generated and maintained by existing telemarketing and customer service employees. See, MCI at 2-3.

Third, it would be easier to update individual company lists than it would be to update a national database. Most companies will try to avoid antagonizing customers in their local markets. Company-specific "do not call" lists facilitate resolution of problems on a local level, and in a timely manner.

Finally, and most importantly perhaps, from a consumer point of view, is the fact that "do not call" lists preserve consumer choice. Most of the other regulatory policing mechanisms described in the NPRM would force consumers into a Hobson's Choice -- either receive an unrestricted number of telephone solicitations or receive none at all. Many consumers do not mind receiving telephone solicitations from certain favorite charities, causes or organizations. A substantial segment of the population should not be forced to forego the ability to receive some solicitations to accommodate the wishes of the few consumers who wish to ban all telephone solicitations.

The Companies would support a regulatory framework such as the one proposed by the DMA. The DMA proposal would require that a company's policy regarding the operation of its "do not call" system: 1) be in writing; 2) set forth adequate practices to assure that telephone service representatives are informed of and trained in the use of the "do not call" system; 3) remove from the marketer's calling list for a reasonable period of at least one year the names of persons who do not wish to receive calls; and 4) maintain records demonstrating that "do not call" requests are honored.[17]

Those opposed to company-specific "do not call" lists argue that "do not call" lists "would be an administrative nightmare and would only offer

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[17] DMA at 16.

the individual consumer a patchwork of protection."[18] They raise potential problems such as the consumer having to notify every single company that might call him or her and the lack of standardization between companies in terms of how consumers are notified as to the existence of such lists.[19] Further, they argue that regulators would be unable to determine whether there had been a violation of a "do not call" request.[20]

To minimize the need to contact individual companies, consumers can register with the DMA and be placed on their list of consumers not to call. Many telemarketers refer to the DMA lists thereby significantly reducing the burden on the consumer. With respect to publicity about the rules, consumers could be notified of the new rules through the news, telephone directories, bill inserts, or a live preamble prior to soliciting the consumer. Enforcement of the rules would be as in every other judicial or quasi-judicial matter. The consumer would notify the appropriate regulatory body who would then investigate the matter.[21] In sum, the objections to company-specific "do not call lists" can be effectively handled by existing procedures and existing channels of communication.

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[18] Consumer Action at 13.

[19] Id.

[20] Id.

[21] Consumers have numerous remedies under the Act. The federal law does not preempt state laws, so consumers will still have the protections available under state law. Additionally, the Act authorizes injunctive relief and a private right of action for monetary damages. 47 U.S.C. § 227(a)(3). The existing Commission complaint mechanism would be an additional option for those consumers who feel that the rules have not been honored.

V. A NATIONAL OR REGIONAL DATABASE WOULD BE COSTLY, DIFFICULT TO ADMINISTER AND SHOULD NOT BE ADOPTED.

Many commenters noted the many deficiencies inherent in a proposal to create a national database.[22] Probably first and foremost is the widespread acknowledgement that a national database would be costly to develop and administer.[23] An expensive national database would be wholly inconsistent with the Commission's tentative conclusion that the database would not be government sponsored.[24] Further, the President, in his signing statement, said that the Act should be implemented "at the least possible cost to the economy."[25] There is no way that a national database could be reconciled with that mandate from the President.

Second, not only would a national database be extremely costly, it would probably require the establishment of a federal agency to administer the database. Telemarketers would be required to submit their calling lists to such an agency that would then delete the names of individuals who did not wish to receive calls. This would be a mammoth undertaking. The majority of businesses in the country would probably have a "list" of some sort to submit to this central agency. This could substantially impede the free flow of commerce in this country. Further, the agency would also have to develop procedures to protect the confidentiality of customer lists and any other

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[22] See, DMA at 21-22, American Banker's Association at 4, Association of National Advertisers at 3, AT&T at 11-14, MCI at 5-6, Sprint Corporation at 8, and J.C. Penney at 22.

[23] The Center for the Study of Commercialism suggested establishment of a national database paid for by telephone companies and reimbursed by telemarketers (at 12). This suggestion should be rejected. The local telephone companies are not the source of the problem, and should not be required to invest time, money and other resources to resolve problems not of their making.

[24] NPRM at ¶ 29.

[25] Presidential Signing Statement, S.1462.

proprietary information submitted by companies throughout the nation. All of this would result in additional costs on the companies that use telemarketing which would, in turn, result in increased costs to consumers.

Several commenters pointed to the Florida experience as an example of the complications of a government-administered database.[26] In Florida, the database is maintained by a state sponsored agency. In addition to the administrative burden placed on small businesses, they must also bear the additional expense of purchasing the state-mandated list. The database is relatively costly for smaller companies. The cost is approximately $1,600 per year.[27] All of the problems with the Florida program will be compounded in any attempt to transfer a similar program to the national level. Further, there appears to be acknowledgment by consumers that the Florida system is not working, as evidenced by the minimal, and perhaps declining, level of consumer participation.[28]

Third, unless it were supported by very sophisticated software, a national database would probably eliminate consumer flexibility. Consumers would not be able to identify companies from whom they wish to receive solicitations.

Finally, none of the commenters proposed a cost-effective mechanism whereby the database could be updated on a timely basis. It has been suggested that a time lag of several months would be acceptable to

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[26] Merrill Lynch, Pierce, Fenner & Smith, Inc., at 3-4, American Express Company at 12, Time Warner at 7, Fn. 9 and DMA at 25..

[27] The cost is $1,000 annually for paper edition, but on a national level, paper copies might prove too unwieldly.

[28] See, American Express Company at 12.

consumers,[29] but such a time lag undoubtedly reduces the perceived effectiveness of such a system. Company-specific "do not call" lists are much more flexible and susceptible to accommodating frequent changes.

Although the Companies recognize that consumers have a legitimate concern about telemarketing calls, it quickly becomes apparent that a national database would require that very substantial resources be devoted to a relatively small consumer relations problem.[30] One that can be addressed in an effective and efficient manner by other less costly and less complex means.

VI. THE OTHER REGULATORY PROPOSALS ARE NOT TECHNICALLY FEASIBLE OR WOULD BE INEFFECTIVE.

As indicated in the initial Comments of the Companies, there are significant limitations to the other proposals discussed in the NPRM.[31] Time of day restrictions are generally honored by most telemarketers as "good business etiquette," but by themselves will not necessarily reduce the number of telephone solicitations actually received. Special directory markings would provide some relief to consumers who do not wish to receive any calls, however, this option also eliminates consumer choice. It is another "all or nothing" solution. Modification of the North American Numbering Plan to allow a unique seven digit number to be reserved or assigned in every area code would be an extravagant use of a finite resource. Further, current technology does not permit the called party to block all calls from a single prefix on a terminating basis. Thus, none of the alternatives discussed above

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[29] Consumer Action at 12.

[30] The Commission only received 757 complaints in 1991 and sales were $435,000,000,000 the preceding year. NPRM ¶ 24. Moreover, the American Council of Life Insurance reported that its members received only 26 complaints out of 3.4 million calls in 1991.

[31] Ameritech Operating Companies at 16-17.

offer substantial promise as a solution to the problem of unwanted telephone solicitations.

VII. CONCLUSION.

In general, the Commission's proposed regulations in this matter represent a constitutionally sound and pragmatic solution to the problem of unwanted telephone solicitations. By clarifying exactly which types of equipment are to be categorized as autodialers and when their use in connection with residential phone calls will be permitted, the Commission will have set forth a workable outline for a solution to this problem. Significantly, by adopting a regulatory framework based on company-specific "do not call" lists, the Commission will place the costs of the reforms on the companies engaged in telemarketing, and will not unfairly burden third parties. Moreover, the foundation for a regulatory solution based on company-specific "do not call" lists is already in place.

Respectfully submitted,

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June 25, 1992

CERTIFICATE OF SERVICE

I, Jenell Thompson, do hereby certify that a copy of the Reply Comments of the Ameritech Operating Companies has been mailed this 25th day of June 1992, by first-class mail, postage prepaid, to the parties on the attached service list.

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Investor's Business Daily
1941 Armacost Ave.
Los Angeles, CA 90025

Raymond A. Jansen
The Hartford Courant
Hartford, CT 06115

Christine M. Yakulik
The Johnstown Tribune Publishing Company
The Tribune Democrat
Johnstown, PA 15907

Richard L. Holtz
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217 N. Sixth St.
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Kalamazoo Gazette/Weekly Gazette/
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